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9 UNITED STATES DISTRICT COURT  
10 FOR THE EASTERN DISTRICT OF WASHINGTON

11 UNITED STATES OF AMERICA,

12 Plaintiff,

13 v.

14 FELIPE TAPIA-PEREZ,

15 Defendant.

Case No. 2:21-CR-00047-WFN

GOVERNMENT'S SENTENCING  
MEMORANDUM

16 Plaintiff, United States of America, by and through Vanessa R. Waldref, United  
17 States Attorney for the Eastern District of Washington, and Michael J. Ellis, Assistant  
18 United States Attorney for the Eastern District of Washington, submits the following  
19 sentencing memorandum.

20 **I. BACKGROUND**

21 The Government agrees with the Offense Conduct summary outlined in  
22 paragraphs ten through forty-one of the draft Presentence Investigation Report. *See*  
23 ECF No. 72 at ¶¶ 10–41. The Defendant, an alien unlawfully within the United States,  
24 obtained two stolen pistols. On February 27, 2021, the Defendant and the mother of  
25 the Defendant's children became engaged in a domestic dispute in the Defendant's  
26 vehicle. The Defendant was holding one of the stolen firearms. During the argument,  
27 the Defendant was waving the handgun around and the firearm went off. The bullet  
28 went past the Defendant's partner and struck the Defendant's four-year-old child, who

1 had been standing outside the front passenger side window, in the forehead. While  
2 driving the child and his partner to the hospital, the Defendant told his partner to lie  
3 about the incident – which she did on two occasions before telling law enforcement  
4 the truth during a third interview.

5 The Defendant was prohibited from possessing the firearms due to the  
6 Defendant’s lack of immigration status. Further, although uncharged, the Defendant  
7 was the respondent to a domestic violence no-contact order with his partner – an  
8 entirely independent reason prohibiting the Defendant’s firearm possession. The  
9 Defendant also had reasonable cause to believe the firearms were stolen.

## 10 II. SENTENCING CALCULATIONS

11 The Government agrees with the sentencing guideline calculations in the draft  
12 Presentence Investigation Report. However, absent the stipulations in the Plea  
13 Agreement, the Government’s position is that a base offense level of 38 would have  
14 been appropriate given the cross-reference to murder in the second degree. *See*  
15 U.S.S.G. §§ 2K2.1(c)(1)(B); 2A1.2. The Government’s cross-reference murder theory  
16 was premised upon the Defendant acting with a “depraved-heart,” *i.e.*, where (1) a  
17 defendant’s conduct created a very high degree of risk of injury to other persons,  
18 (2) the defendant was aware of that risk, and (3) the defendant does not have a  
19 justifiable reason for taking that risk. *See United States v. Pineda-Doval*, 614 F.3d  
20 1019, 1038 (9th Cir. 2010). Here – where the Defendant waved around a loaded  
21 firearm during a domestic dispute in a location where the four-year-old was standing  
22 right behind the Defendant’s partner out the window – the Government was prepared  
23 to argue that the Defendant’s conduct was “sufficiently grievous enough to be  
24 considered murder.” *See id.* The Government and the Defendant have, however,  
25 proposed a joint recommendation to the Court removing the need for specific findings  
26 concerning a higher offense level – the Court is instead asked to apply an upward  
27 variance to impose the sentence jointly recommended by the parties.

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1       **III. SENTENCING FACTORS UNDER 18 U.S.C. § 3553(a)**

2       In determining the appropriate sentence, this Court should consider the factors  
3 as set forth in 18 U.S.C. § 3553(a).

4       A. The nature and circumstances of the offense and the history and  
5       characteristics of the Defendant

6       The nature and characteristics of the Defendant's conduct warrant a sentence of  
7 168 months imprisonment. The Defendant, unlawfully in possession of firearms,  
8 engaged in a domestic violence argument with his partner from whom he was barred  
9 from having contact due to a prior domestic violence incident. During the argument  
10 the Defendant was waving a loaded firearm around a small vehicle – the firearm went  
11 off and the Defendant's four-year-old child was killed. This case is tragic and blame  
12 ultimately rests with the Defendant. The Defendant has however taken responsibility  
13 for his conduct both before this Court and the Adams County, Washington, Superior  
14 Court. The Government accordingly requests that the Court accept the  
15 Rule 11(c)(1)(C) Plea Agreement and sentence the Defendant to 168 months  
16 imprisonment, concurrent with the Defendant's 86-month sentence for manslaughter  
17 in the first degree under Adams County, Washington, Superior Court Case No. 22-1-  
18 00156-01. Nothing can change what happened – the Defendant will have to live with  
19 the consequences of killing his son forever. But, given the various relevant factors, a  
20 168-month sentence is sufficient, but not greater than necessary, to further the  
21 purposes of sentencing.

22       The Government also asks the Court to impose a three year term of supervised  
23 release. The Defendant will likely be removed from the United States following his  
24 sentence; however, should the Defendant consider unlawfully returning to the United  
25 States, a term of supervised release will deter that action given the consequences that  
26 follow violating supervised release.

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1 B. The need for the sentence imposed to reflect the seriousness of the offense,  
2 promote respect for the law, and to provide just punishment

3 For the reasons discussed above, the Government asks that the Court sentence  
4 the Defendant to 168 months imprisonment. Considering the nature of the offense and  
5 the Defendant's history, a 168-month sentence is appropriate to reflect the seriousness  
6 of the conduct, promote respect for the law, and provide just punishment.

7 C. The need for the sentence imposed to afford adequate deterrence to criminal  
8 conduct

9 As discussed above, a 168-month sentence followed by a three year term of  
10 supervised release will deter future criminal actions by the Defendant.

11 D. The need for the sentence imposed to protect the public from further crimes  
12 of the Defendant

13 As discussed above, the Defendant – through his unlawful firearm possession  
14 and domestic violence – represents a danger to the public. A 168-month sentence thus  
15 protects the public by removing the Defendant from the community for a substantial  
16 period of time.

17 E. The need for the sentence imposed to provide the Defendant with needed  
18 educational or vocational training, medical care, or other correctional  
19 treatment in the most effective manner

20 The Defendant may be able to take advantage of any services and training  
21 offered by the Bureau of Prisons.

22 F. The kinds of sentences available

23 The Court may sentence the Defendant to up to twenty years in prison, a fine of  
24 up to \$250,000, and three years of supervised release.

25 G. The kind of sentence contemplated by the Sentencing Guidelines

26 The Sentencing Guidelines contemplate a sentence much lower than that jointly  
27 recommended by the Government and the Defendant. However, as discussed above,  
28 the Government would have recommended the application of a far higher guideline

1 range should the parties have been unable to propose a joint resolution. The 168-  
2 month recommended sentence represents a middle ground between the parties, sparing  
3 both the Government and the Defendant from the litigation risks that would  
4 accompany a contested sentencing hearing.

5 H. Any pertinent policy statements issued by the Sentencing Commission

6 There are no pertinent policy statements in this case.

7 I. The need to avoid unwarranted sentence disparity among defendants with  
8 similar records who have been found guilty of similar conduct

9 A 168-month sentence may be disparate from sentences imposed concerning  
10 other unlawful aliens convicted of possessing stolen firearms. However, the  
11 recommended 168-month sentence is premised on the consequences following the  
12 Defendant's actions – the death of the Defendant's four-year-old son. When  
13 considering the consequences of the Defendant's actions, a 168-month sentence for  
14 conduct which took the life of a young child is reasonable.

15 J. The need to provide restitution to any victims of the offense

16 There is no anticipated restitution – restitution was ordered as part of the  
17 Defendant's Adams County Superior Court sentence.

18 **IV. GOVERNMENT'S SENTENCING RECOMMENDATION**

19 As discussed above, the Government recommends that the Court impose a 168-  
20 month sentence followed by a three year term of supervised release with the  
21 conditions outlined in the draft Presentence Investigation Report. *See* ECF No. 72 at  
22 24–30. Such a sentence is sufficient, but not greater than necessary, to accomplish the  
23 purposes outlined in 18 U.S.C. § 3553(a).

24 Dated: March 15, 2023.

25 Vanessa R. Waldref  
26 United States Attorney

27 s/Michael J. Ellis  
28 Michael J. Ellis  
Assistant United States Attorney

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*s/ Michael J. Ellis*  
Michael J. Ellis  
Assistant United States Attorney